



ARIZONA SUPREME COURT ORAL ARGUMENT CASE SUMMARY

**In re: JAMES M. SMITH, Debtor. SIDNEY LACHTER AND
SANDRA LACHTER v. JAMES M. SMITH
CV-04-0153-CQ**

PARTIES/COUNSEL:

Plaintiffs: Sidney and Sandra Lachter, represented by Lawrence D. Hirsch of Hirsch Law Offices, P.C.

Defendant: James M. Smith ("Debtor"), represented by Ronald J. Ellett of Ellett Law Offices, P.C.

FACTS:

James M. Smith (the "Debtor") filed a chapter 13 bankruptcy petition on July 13, 1995. Among the objectors to the Debtor's chapter 13 plan were Sidney and Sandra Lachter ("Lachters"). The Lachters owned a state court money judgment against the Debtor. The Lachters timely renewed that judgment in 1992 in accordance with Arizona law. On July 16, 1996, the Debtor voluntarily converted his chapter 13 case to chapter 7. On November 12, 1995, the debtor received his discharge.

On September 27, 1996, the Lachters filed an adversary proceeding against the Debtor seeking a determination that their judgment was not dischargeable in bankruptcy due to fraud. Following a trial, the bankruptcy court determined that the Lachters' claim/judgment was not dischargeable in bankruptcy. That judgment was entered on November 4, 1998. That determination was appealed and the Ninth Circuit Bankruptcy Appellate Panel affirmed the decision that the claim was not dischargeable. *In re Smith*, 242 B.R. 694 (9th Cir. B.A.P. 1999).

On August 29, 2000, the Lachters filed a second adversary proceeding against the debtor seeking a declaratory judgment that they had timely renewed their judgment in accordance with Arizona law. The bankruptcy court granted the Lachters summary judgment on that claim. On appeal, the Ninth Circuit Bankruptcy Appellate Panel reversed that decision and remanded the matter back to the bankruptcy court to "consider whether the Lachters timely renewed the judgment in accordance with 11 U.S.C.A. § 108(c)(1). *In re Smith*, 293 B.R. 220 (9th Cir. 2003). The Bankruptcy Appellate Panel also raised questions about the applicability in these circumstances of A.R.S. § 12-1612(B), which provides that a renewal of judgment be filed within the ninety days preceding expiration of the five year renewal period.

While the bankruptcy litigation was pending, the Lachters' filed three renewal affidavits with the Maricopa County Superior Court. The first was filed on November 7, 1997. A supplemental affidavit was filed on December 6, 1998. A third affidavit was filed on October 28, 2002.

The bankruptcy court has certified two questions to the Arizona Supreme Court.

CERTIFIED QUESTIONS:

A. When a pending bankruptcy case is unresolved and the time period under Arizona law to file the required affidavit of renewal of judgment has passed, under what circumstances, if any, is the time period under A.R.S. § 12-1551 extended or otherwise changed to allow the judgment creditor to file a timely affidavit of renewal of judgment?

B. Were either of the affidavits of renewal of judgments filed by the Lachters timely filed?

RELEVANT STATUTES:

A.R.S. § 12-1551(B) provides:

B. An execution or other process shall not be issued upon a judgment after the expiration of five years from the date of its entry unless the judgment is renewed by affidavit or process pursuant to section 12 -1612 or an action is brought on it within five years from the date of the entry of the judgment or of its renewal.

A.R.S. § 12-1612(B) provides for filing of a renewal affidavit by the judgment creditor “within ninety days preceding the expiration of five years from the date of entry of such judgment . . .”

11 U.S.C.A. § 108(c) provides, in relevant part:

(c) Except as provided in section 524 of this title, if applicable nonbankruptcy law . . . fixes a period for commencing or continuing a civil action in a court other than a bankruptcy court on a claim against the debtor . . . , and such period has not expired before the date of the filing of the petition, then such period does not expire until the later of –

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) 30 days after notice of the termination or expiration of the stay under section 362, 722, 1201, or 1301 of this title, as the case may be, with respect to such claim.

This Summary was prepared by the Arizona Supreme Court Staff Attorney's Office solely for educational purposes. It should not be considered official commentary by the court or any member thereof or part of any brief, memorandum or other pleading filed in this case.